Filed 7/15/19 In re M.A. CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re M.A., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B294319 (Super. Ct. No. J071766) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. E.C., Defendant and Appellant.	

E.C. (mother) appeals from a juvenile court judgment terminating parental rights to her daughter, M.A. (child). (Welf. & Inst. Code, § 366.26.)[1] Mother contends that the juvenile court

[1] All statutory references are to the Welfare and Institutions Code.

and the Ventura County Human Services Agency (HSA) failed to comply with the notice/inquiry requirements of the Indian Child Welfare Act (ICWA, 25 U.S.C. § 1901 et seq.).[2]

Mother's contention is based on the claimed Indian ancestry of child's father. (See *In re Jonathon S.* (2005) 129 Cal.App.4th 334, 339 [non-Indian parent "has standing to assert an ICWA notice violation on appeal"].) We conclude that father's claim of Indian ancestry was too vague and speculative to trigger ICWA's notice/inquiry requirements. Accordingly, we affirm.

Relevant Factual and Procedural Background

Father told a social worker that his deceased mother "may have [Native] American Ancestry but [he] is not sure what tribe." Father signed a form in which he stated: "I may have Indian ancestry. . . . [I] don't know tribe. [Child's] [p]aternal great great grandma may have been native American."

At child's detention hearing, the juvenile court asked father's counsel whether "there [is] anybody else . . . that [HSA] could contact to ask questions" about father's claim of Indian ancestry. Counsel replied, "No, your Honor. There's no one else that he's aware of." The court inquired whether father had "any parents or grandparents that we could speak to that might have more knowledge?" Counsel responded, "No your honor. He has no contact with that family." Counsel continued, "What he stated [about his Indian ancestry] is correct to his knowledge, but he has

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[2] "In 2006, our state Legislature 'incorporated ICWA's requirements into California statutory law.' [Citation.] 'ICWA's many procedural requirements . . . are found in sections 224 through 224.6.' [Citation.]" (*In re J.L.* (2017) 10 Cal.App.5th 913, 918.)

no other way to corroborate it, your Honor. That's all the information that he has." "He's not aware of any tribal name."

The court asked father how he "came to know" that he may have Indian ancestry. Father responded: "[W]hen I was with my mom, like, I was, like, eight years old. My grandma showed me a picture of my great-grandma. She was a little Indian lady. That's it, you know. And they told me stories about it, but, I mean, that's all the way on the other side of the country and I don't know – I don't communicate with them. . . . [¶] I have no contact with them." "I can't answer anything other than that. I don't know."

The court ruled: "Let's say ICWA may apply so we can look into it further. I'm not really sure that notice is required, but it will give us a chance to look into it."

After the detention hearing, a social worker contacted father to inquire whether he had additional information about his Indian ancestry. The social worker wrote, "[F]ather . . . [said] that he does not know anything else about his American Indian heritage and he does not talk to his family. . . . He was unable to provide any paternal family contact information."

Despite the lack of information about father's Indian ancestry, HSA mailed notice to the Bureau of Indian Affairs (BIA) informing it that "a child custody proceeding under the [ICWA] has been initiated for [child]." The notice provided information about father. Under the heading "Additional information," HSA wrote: "Father has no relationship with his deceased mother's family. Reports ancestry but has no living relatives with detailed information." As to father's mother, the only information provided was her name, the month and year of her birth, the "approximate" year of her death, and the place of

her death. No information, not even names, was provided as to father's father or his family,[3] father's mother's parents, or father's great-grandmother depicted in the photograph that father had been shown when he was eight years old. BIA returned the notice "due to insufficient information to determine tribal affiliation."

At a subsequent ICWA hearing, the trial court declared: "We just don't have enough information. . . . And so I'll find notice as required by law has been given and that ICWA does not apply."

ICWA Notice/Inquiry Requirements

"Under ICWA, a party seeking foster care or termination of parental rights must notify an Indian child's tribe of the pending proceedings and of its right to intervene. [Citation.] The notice provision applies if 'the court knows or has reason to know that an Indian child is involved . . . .' [Citation.] . . . [¶] If the notice duty is triggered under ICWA, the notice to a tribe must include a wide range of information about relatives, including grandparents and great-grandparents, to enable the tribe to properly identify the children's Indian ancestry. [Citation.] Any violation of this policy requires the appellate court to vacate the offending order and remand the matter for further proceedings consistent with ICWA requirements. [Citation.]" (*In re J.D.* (2010) 189 Cal.App.4th 118, 123-124.)

The "'courts and county welfare departments "have an affirmative and continuing duty to *inquire* whether a child for whom a petition under Section 300 . . . is to be, or has been, filed

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[3] Information about father's father's family was irrelevant because father told a social worker "that his mother [not his father] may have [Native] American Ancestry."

is or may be an Indian child in all dependency proceedings . . . if the child is at risk of entering foster care or is in foster care.'" [Citation.]" (*In re J.L.*, *supra*, 10 Cal.App.5th at p. 918.) "If . . . circumstances indicate a child may be an Indian child, the social worker must further inquire regarding the child's possible Indian status. Further inquiry includes interviewing the parents, . . . extended family members or any other person who can reasonably be expected to have information concerning the child's membership status or eligibility. [Citation.]" (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1539; see also Cal. Rules of Court, rule 5.481(a)(4) ["If the social worker . . . or petitioner knows or has reason to know that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable"].)

Standard of Review

"[B]ecause the material facts underlying [mother's] claim are undisputed, 'we review independently whether ICWA requirements have been satisfied.' [Citation.]" (*In re J.L.*, *supra*, 10 Cal.App.5th at p. 918; see also *In re Michael V.* (2016) 3 Cal.App.5th 225, 235, fn. 5.)

ICWA Notice/Inquiry Duty Was Not Triggered

Mother argues, "The order terminating parental rights must be reversed so the juvenile court can direct [HSA] to inquire of father concerning the names of his father, his grandparents, and his great-grandmother, as well as his living relatives, and thereafter either locate and contact his living relatives, or at the very least include the names of his father, grandparents and great-grandmother in a subsequent . . . notice to the BIA."

Case law shows that the ICWA notice/inquiry duty was not triggered. The information provided by father is similar to the

information provided by the mother in *In re J.D.*, *supra*, 189 Cal.App.4th 118. There, "mother Claudia C. . . . told the social worker that she had been informed by her own maternal grandmother that Claudia had Native American ancestry, but Claudia did not know whether it was from her maternal grandmother or maternal grandfather, advising the Department that 'I can't say what tribe it is and I don't have any living relatives to provide any additional information. I was a little kid when my grandmother told me about our Native American ancestry but I just don't know which tribe it was.'" (*Id.* at p. 123.) The appellate court concluded that the information was insufficient to trigger the ICWA notice/inquiry duty: "This information is too vague, attenuated and speculative to give the dependency court any reason to believe the children might be Indian children." (*Id.* at p. 125.)

The reasoning of *In re J.D.* has been applied in other cases under similar circumstances. In *In re Hunter W.* (2011) 200 Cal.App.4th 1454, the "mother indicated she may have Indian heritage through her father and deceased paternal grandmother. She could not identify the particular tribe or nation and did not know of any relative who was a member of a tribe. She did not provide contact information for her father and did not mention any other relative who could reveal more information." (*Id.* at p. 1468.) The appellate court upheld the juvenile court's ruling that mother's "information [was] too speculative to trigger ICWA." (*Ibid.*) In so ruling, the juvenile court noted that "'family lore'" is not "'reason to know a child would fall under [ICWA].'" (*Id.* at p. 1467, brackets in original.)

In *In re J.L.*, *supra*, 10 Cal.App.5th at pp. 922-923, the mother "indicated on a . . . form that she was 'not sure' whether

she had Indian ancestry, and her counsel stated in court that [mother] had 'repeatedly been told by family members that she might have some American Indian heritage.'" The appellate court concluded: "[Mother] did not know whether she had American Indian heritage of any kind, did not know the names of the relatives who might have had such heritage, and had heard only a 'general or vague' reference to possible heritage. Such '"family lore,"' [citation] of possible American Indian heritage does not trigger a social worker's duty to conduct a 'further inquiry' [citation] into a child's possible Indian ancestry. [Citations.] Further, vague statements suggesting that a child '"may" have Native American heritage [are] insufficient to trigger ICWA *notice* requirements.' [Citation.]" (*Id*. at p. 923; see also *In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1516 ["a claim that a parent, and thus the child, 'may' have Native American heritage is insufficient to trigger ICWA notice requirements if the claim is not accompanied by other information that would reasonably suggest the minor has Indian ancestry"].)

Here, father said he "may have" Native American heritage. His claim was "not accompanied by other information that would reasonably suggest [child] has Indian ancestry." (*In re Jeremiah G.*, *supra*, 172 Cal.App.4th at p. 1516.) Father's claim was based on family lore. It was supported only by an undescribed photograph of his great-grandmother, which at the age of eight had led him to believe that she was a "little Indian lady," and "stories [he had been told] about it." Father provided minimal information about his mother and no information about his mother's parents or great-grandmother, not even their names. "This information is too vague, attenuated and speculative to give the dependency court any reason to believe [child] might be [an]

Indian child[]. We therefore find no error." (*In re J.D.*, *supra*, 189 Cal.App.4th at p. 125.)

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

John L. Dodd, under appointment by the Court of Appeal for Defendant and Appellant.

Leroy Smith, County Counsel, Joseph J. Randazzo, Assistant County Counsel, for Plaintiff and Respondent.